

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
DOVER, DELAWARE 19901
PHONE: (302) 739-4618**

**CHARLES W. WELCH, III
JUDGE**

March 25, 2011

Mr. Shawn Russum
494 Silver Leaf Lane
Dover, DE 19901

Ms. Carla Russum
580 Silver Leaf Lane
Dover, DE 19901

RE: Shawn Russum v. Carla Russum
C.A.No.: CPU5-10-002706

Decision on Defendant's Request to Dismiss

Dear Mr. Russum and Ms. Russum:

This case involves a civil debt action. At the pre-trial conference for this matter, Defendant Carla Russum requested that the case be dismissed. She contends that Plaintiff Shawn Russum's claim is barred by the applicable statute of limitations. The court heard proffers of evidence concerning this issue and reserved decision. This correspondence constitutes the court's decision. The plaintiff's claim against the defendant is barred by the applicable statute of limitations. Therefore, it must be dismissed.

FACTS

The court heard proffers of evidence at the pre-trial conference for the above-referenced matter. From these proffers, the undisputed facts of this matter are as follows:

Plaintiff Shawn Russum is the son of Defendant Carla Russum. On or about, April 22, 1986, the defendant obtained a certificate of deposit in the plaintiff's name. The defendant was listed as the custodian for the plaintiff on the certificate of deposit.

The plaintiff turned twenty-one years of age on January 30, 1998, and already knew about the certificate of deposit. Sometime before 2006, the plaintiff commenced paying income taxes on the interest accrued on the certificate of deposit for each tax year. On or about August 22, 2006, the certificate of deposit matured. At this point, the defendant liquidated the certificate of deposit and kept the proceeds from it in the amount of \$16, 039.39. In January of 2008, while he was gathering information to prepare his 2007 income taxes, the plaintiff discovered that the defendant had liquidated the certificate of deposit and kept the proceeds. The plaintiff filed the current debt action for the recovery of all funds the defendant received from the certificate of deposit plus pre and post judgment interest on November 30, 2010.

ISSUES

The facts for this matter raise two issues. The first issue is whether the plaintiff was the actual owner of the certificate of deposit that was liquidated by his mother. If the plaintiff is determined to be the actual owner of the certificate of deposit, the second issue to be decided is whether his claim is barred by the applicable statute of limitations.

DISCUSSION

A. Ownership of the Certificate of Deposit.

The plaintiff is the actual owner of the certificate of deposit. "A certificate of deposit is presumed to belong to the person whose name appears on the certificate."¹

Matter of Estate of Casey, 507 N.E.2d 962, 967 (Ill. 4th Dist. 1987). It was determined at

¹ Although sufficient facts were not presented, it is also believed by the court that the certificate of deposit in this case was created pursuant to the Delaware Uniform Transfers to Minors Act. 12 *Del. C.* § 4509. Under this Act, Mr. Russum obtained legal title to the certificate of deposit upon reaching twenty-one years of age.

the pre-trial conference in this matter that the certificate of deposit was in the plaintiff's name. The defendant failed to present adequate evidence to rebut the presumption that the plaintiff owned the certificate of deposit. Thus, the court finds that the certificate of deposit was owned by the plaintiff and he may properly contest the defendant's actions in this case.

B. Statute of Limitations.

The plaintiff's claim in this case is barred by the applicable statute of limitations. Section 8106 of Title 10 of the Delaware Code provides that "no action to recover a debt not evidenced by a record or by an instrument under seal . . . shall be brought after the expiration of 3 years from the accruing of the cause of such action . . ." Delaware case law makes clear that a cause of action accrues under Section 8106 at the time of a wrongful act, even if a plaintiff is ignorant of the cause of action. *See Wal-Mart Stores, Inc. v. AIG Life Insurance Company*, 860 A.2d 312, 319 (Del. 2004). Here, the defendant wrongfully liquidated the certificate of deposit and kept the proceeds on or about August 22, 2006. The plaintiff's cause of action accrued on that date. He filed the current debt action on November 30, 2010. Thus, his claim is barred by the statute of limitations because more than three years elapsed between his cause of action accruing and his filing of the current action.

In addition, no exception to the three year limitation applies in this case. "Under the 'discovery rule' the statute is tolled where the injury is 'inherently unknowable and the claimant is blamelessly ignorant of the wrongful act and the injury complained of.'" *Id.* "The party asserting that tolling applies bears the burden of pleading specific facts to demonstrate that the statute of limitations is, in fact, tolled." *Reid v. Thompson Homes at*

Centreville, Inc., 2007 WL 4248478, at *8 (Del.Super.). The facts of this case and the evidence presented by the plaintiff do not satisfy the “discovery rule” exception. The plaintiff knew about the certificate of deposit before his twenty-first birthday in 1998. Furthermore, he commenced paying income taxes on the interest accrued on the certificate of deposit for each tax year at some point before 2006 and discovered that the defendant liquidated the certificate in 2008. These facts demonstrate that the injury in this case was not “inherently unknowable” to the plaintiff. Therefore, he was required to bring suit within three years of the action accruing.

CONCLUSION

Given the court’s findings of fact and conclusions of law, the plaintiff’s claim against the defendant is barred by the applicable statute of limitations. Therefore, it is dismissed with prejudice.

IT IS SO ORDERED.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is fluid and cursive, with the first name "Charles" being the most prominent.

Charles W. Welch, III

CWW:mek